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What is 'A Successful Integration'? Family Reunification and the Rights of Children in Denmark

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Abstract: *This article explores Danish law on immigration and integration and the quest of third-country nationals for family reunification with their children. The legislation has developed such that age limitations and requirements on integration may entail a denial of a permit for family reunification for very young children who have been living in their parents' home country for a longer period. This set-up has an impact on the individual and may appear blind towards other types of constraints causing a child to live abroad while their parent is living in Denmark. Moreover, it makes the legal status of children dependent on the integration of the parents in Denmark. The article will address and analyse both the newest legislation and some administrative cases that show the application of the rules in practice. The investigation will illustrate how the latest legal amendments, although presented as a relaxation of rules, have in fact not substantially altered the restraints put on family reunification rights in Denmark in the last decade. In particular, the legal effects of integration requirements for children will be analysed and evaluated from a critical perspective, advocating an ethical assessment of the rules enforced thus far.*

Keywords: Immigration Law – Integration
– Family Reunification – Rights of Children
– Denmark

Introduction¹

In Denmark, as in other European countries, the concept of integration of foreign residents has made its way into the laws regulating immigration. Migrant workers, family members, and humanitarian migrants have to show, to different degrees and at different stages, a serious commitment to integrating in the receiving country. The oft-repeated mantra is that integration takes place in the labour market, and also entails learning the national language and societal values and norms. But what happens when the migrant is a child who is required to prove a potential for a successful integration before being allowed to be family reunited with her parents in Denmark? How does the law 'measure' integration as far as children's right

1. The article was first presented at a conference on 'Gender and Law in the Nordic Countries' at the University of Copenhagen in September 2012. The author wishes to thank the participants for insightful comments, and in particular Professor Kirsten Ketscher and Associate Dean of Education, Associate Professor Stine Jørgensen for inviting me to write a paper focusing on children's rights. The inputs provided by Professor Bettina Lemann Kristiansen, former Supreme Court President, Adjunct Professor, Børge Dahl, and two anonymous reviewers are also gratefully acknowledged. Last but not least warm thanks are due to Sean Plaisted for proofreading and never-ending support.

to family reunification is concerned? This article will engage these contested questions concerning family life of third-country nationals (i.e., non-EU nationals²) in Denmark. As the analysis will show, this group of foreigners who wish to live with their children in their new country of residence may experience a distressing administrative journey filled with numerous requirements to be met and uncertainties with which to cope. How Danish law defines integration and how the authorities administer the law is a matter to scrutinize because it sways our general understanding of the best interests of children, and of how to treat cases of family reunification in an ethical and morally defensible way.

Since 2004, the Danish Aliens Act introduced a requirement for family reunification with children, stating that in some cases children should prove the potential for 'a successful integration'. In practice, the rule is administered so that in many cases very young children are denied family reunification if more than two years have passed between the moment the parent in Denmark *can legally* apply for family reunification and the moment she actually *does* file an application. As a matter of fact, the requirement of successful integration is extremely difficult to fulfil. In 2004, the possibility to be family reunited with minor children over the age of fifteen was also considerably reduced: it is now almost impossible to be family-reunited with children between the age of fifteen and eighteen, unless the parent is a recognised refugee in Denmark.

Children under the age of fifteen, in the case that their parents waited a long period before applying for family reunification, shall instead have their 'integration potential' evaluated. This evaluation normally leads to a refusal of a per-

mit for family reunification, so the law sends a clear symbolic signal about what type of integration (and immigration) the Danish state desires. Thus the administration of the rules on family reunification for children has resulted in a number of cases that show how far the government has been willing to go to promote and insist upon the integration of foreigners from non-Western countries regarding cultural, linguistic, and societal integration. This article focuses on rejection cases of first-time applications for a residence permit. In these cases, the refusal of family reunification appears to be a punishment for the parents' lack of integration, especially in the labour market, more than a real appraisal of the integration potential of the children. In the European context, Member States can introduce similar integration requirements for children over the age of twelve who arrive in an EU-country, independently from the rest of the family, as specified in the Family Reunification Directive.³ Also, case law from the European Court of Justice is starting to rule on civic integration requirements.⁴ Integration is finding its way into immigration law, at both a national and supranational level.

In the following, I will first introduce the methodological considerations at the basis of this article, and then the political context wherein the latest amendments took place (in 2012), followed by a presentation of the legal system for family reunification in Denmark. Moreover, in order to concretise and give a clear picture of the complicated rules, I will present three administrative cases on family reunification of children, in particular young girls, which

2. Also children of refugees are exempted from the requirement. Refugees cannot be referred to have a family life in their country of origin, and therefore family reunification with children up to eighteen years old will be granted.

3. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Article 4 (1), final subparagraph.

4. The first cases appeared in June-July 2015, see case C-579/13, *P and S v. Commissie Sociale Zekerheid Breda, College van Burgemeester en Wethouders van de gemeente Amstelveen* and case C-153/14, *Minister van Buitenlandse Zaken v. K and A*.

show how the requirement on successful integration is applied in practice. In the concluding section, I will discuss and evaluate the current legal standards from a politico-legal angle. The goal of the article is thus to offer a critical stand and to open up a debate on these initiatives in Danish immigration and integration law.

1. Integration and Immigration: Political, Legal, and Ethical Claims

The integration of immigrants, generally speaking, can be considered positive for both the immigrants and the host country. Immigrants are expected to partake in the life of the society via a series of steps, such as entering the labour market, adhering to accepted societal norms, learning the official language(s), attending educational courses, etc.⁵ However, there is not a universal consensus on when or how 'integration' is achieved, and the law struggles to categorise a phenomenon which may be an ongoing process more than a distinct status. Political scientists and political philosophy scholars have been dealing with the concept of integration from their particular disciplinary perspective.⁶ Also, integration is analysed in connection with studies on citizenship⁷, access to immigration⁸,

insertion into the labour market⁹, and EU immigration policy.¹⁰ My take on this discussion will be to place and analyse the notion of integration in a national legal context, with a dual objective: I will focus on the legal practice on integration in connection with children's rights, and then go beyond a mere legal dogmatic analysis and present a critical assessment of the rules.

The only definition of integration in Danish law is to be found in the Integration Act, which at Article 1 states that the aim of the Act is 'to ensure that newcomers get a possibility to explore their skills and resources in order to become participating, self-supporting, and contributing citizens on an equal footing with the other citizens of the society in accordance with the fundamental values and norms of the Danish society'. However, it can be problematic to link this definition of integration to the legal context of the Aliens Act, resulting in decisions refusing family reunification due to a lack of 'integration potential'.

The requirements for integration of children from a very young age raise different questions: How is it possible to fairly administer family reunification when the law is confusedly set up, and when the discretion of the administration is limited by very specific and detailed requirements? How can we protect a child's right to be family reunited with a parent living in Denmark and avoid making the child's legal status dependant on their parents' integration? Can the Danish law requirements protect a child's best interests in an ethically and morally responsible way? In order to reflect upon these questions, I will present a politico-legal discussion

5. Kymlicka, W. (2008), *Finding Our Way. Rethinking Ethnocultural Relations in Canada*. Oxford University Press.
6. On the difference between civic, economic, political, and cultural integration, see Goodman, S.W. (2010), Integration Requirements for Integration's Sake? Identifying, Categorising and Comparing Civic Integration Policies, *Journal of Ethnic and Migration Studies*, 36: 5, 753–772, at 754.
7. See for example the INTEC Project: Integration and Naturalisation tests: the new way to European Citizenship. A Comparative study in nine Member States on the national policies concerning integration and naturalisation tests and their effects on integration, Radboud University, Centre for Migration Law.
8. De Vries, K. (2013), *Integration at the Border. The Dutch Act on Integration Abroad and International Immigration Law*. Hart Publishing.

9. See e. g. Constant, A.F. and Klaus F. Zimmermann, K.F. (2009), Migration, Ethnicity and Economic Integration, *IZA Discussion Paper* No. 4620, December 2009.
10. Carrera, S. and Wiesbrock, A. (2009), Civic Integration of Third-Country Nationals. Nationalism versus Europeanisation in the Common EU Immigration Policy, CEPS: Center for European Policy Studies.

that embraces citizens' values and moral-ethical considerations, following the ideal types (or models) of politico-legal science (*retspolitiske idealtyper*) theorised by Danish scholar Jørgen Dalberg-Larsen.¹¹ After describing the law and giving a few examples of how it is administered, I will present a critique of the regulation based on this theory by using the ideal types of politico-legal science to analyse in depth the legislation and assess its reach. This choice of theory is motivated by the fact that immigration law in general, and family reunification in particular, fall into the category that Dalberg-Larsen calls '*problems so complicated, interdisciplinary, and far-reaching, that they require a new form for thinking*'.¹² Also, as pointed out in the context of reception of young asylum seekers in Sweden, children may be entitled to the rights laid down in the Convention on the Rights of the Child from 1989 (CRC), and be subjects to immigration law at the same time, caught in the middle of a '*politically charged context*'.¹³ We need a new way to address these political issues in legal science.

Dalberg-Larsen refers to areas such as gene technology, which are crossing the boundaries between law and ethics and confront us with unknown dilemmas. However, I will contend herein that immigration law also finds itself at a crossroads between law and politics, national law and international/supranational law, and law and morality. The political choices taken in the field of immigration law, and family reunification in particular, clearly reflect the societal

values on who is allowed to enter the State's territory (in Dalberg-Larsen's fourth ideal model: the citizens' values). They are also choices that appeal to a common morality, when vulnerable subjects like children as 'outsiders' are excluded from joining the insiders' community (the fifth ideal of politico-legal science of moral philosophy that Dalberg-Larsen presents). There is also an important imbalance in immigration cases where the subjects may not always be aware of their rights and obligations or may be the target of discrimination and stereotyping discourses. Yet, in these cases, the outcome is of great importance for the persons involved, whether it be a residence permit or a family reunification permit.¹⁴ This imbalance calls for a close scrutiny of immigration law and policy initiatives for an ethically defensible formulation of the rules. Thus since this highly-politicised legal area affects the way we treat vulnerable individuals, I will examine the subject matter in order to find out which principles and values should inform the regulations on children's family reunification and propose a critical analysis based on the ideal models for politico-legal reflections as formulated by Dalberg-Larsen.

In the following, I will focus my analysis on the Danish legal context. After presenting the legislation I will analyse three administrative cases in order to concretise the legal material. As the law is very technical and the political debates blur the picture around the issue of integration, it is hard to grasp the real effect of the law in practice without dealing with their application. I chose to focus on administrative cases for the following reasons. The issue of (lack of) successful integration in family reunification has been dealt with by the Supreme Court (*Højesteret*) in three cases, all of which presented

11. Dalberg-Larsen, J. (2002), Fem opfattelser af retspolitik som retsvidenskabelig aktivitet i historisk og aktuel betydning, in Evald, J. et al. (eds.) *Om retspolitik*, Jurist-og Økonomforbundets Forlag, pp. 9–41.
12. Ibid., p. 35. My translation from Danish; 'thinking' is '*helhedstænkning*' in the original.
13. Ottoson, L., Eastmond, M. and Schierenbeck, I. (2012), Safeguarding a Child Perspective in Asylum Reception: Dilemmas of Children's Case Workers in Sweden. *Journal of Refugee Studies* Vol. 26, No. 2, pp. 247–264, at p. 248.

14. Ottoson, L. and Lundberg, A. (2013), 'People out of Place'? Advocates' Negotiations on Children's Participation in the Asylum Application Process in Sweden, *International Journal of Law, Policy and the Family* 27(2), 266–287, at p. 269.

very similar circumstances and thus the Court's arguments and results were also very similar.¹⁵ The three Supreme Court cases concluded that the Immigration Service or Ministry of Integration had exercised its discretion (*skøn*) correctly, and found that the details which informed the decision had been objective and sufficient. In order to get a more nuanced picture of the questions at stake in family reunification cases, I will survey three administrative decisions in order to closely examine to which circumstances the authorities attached importance when assessing the requirement of successful integration. The cases presented offer a view on unsuccessful cases where children try as hard as they can, so to speak, to fit into a predefined box of 'integration', but they still do not achieve a right to enter and stay with their family in Denmark. The cases were chosen between the administrative cases available at the time of writing¹⁶, and illustrate how far the legislature is willing to go in affirming in a legal text a political integration goal. By using examples I will seek to elucidate how the law is enacted in practice, and what draconian results can ensue for the children and families involved in these cases, 'personifying' the law in the cases presented.

2. Political Context

The legislation for family reunification in Denmark has become a confused area of law, being a consolidation of innumerable legal amendments and with the relevant provision, Arti-

cle 9 in the Aliens Act currently having thirty-seven sections (*stk.*) and fifteen subsections (9a through 9o, each having between one and eleven sections).¹⁷ This is the result of continuous amendments proposed by different governments along the years to suit the ever-changing political atmosphere on immigration and integration. Moreover, the rules can also be changed ad-hoc, thus with little concerns for the rule of law or principles for legal certainty, when cases involving children who are well-integrated but nonetheless facing extradition come to the attention of the media (and of the general public).¹⁸

The law framed after the amendments of June 2012 has been presented as a 'relaxation of the rules' by the lawmakers, although other parties, such as the National Council for Children (*Børnerådet*), and NGOs such as The Danish Refugee Council, Amnesty International, and Save the Children have emphasised that the new rules do not comply with international obligations stemming *inter alia* from the CRC.¹⁹

15. U 2010.1590 H; U 2010.1599 H; and U 2010.1608 H. For a legal dogmatic analysis of the cases, see Halleskov Storgaard, L. (2010), *Børns adgang til familiesammenføring med herboende forældre – om Højesteretsdomme af 19. marts 2010*. *Ugeskrift for Retsvæsen*, U 2010B.384, at 385.

16. The decisions were published on the Immigration Service website until the Immigration Appeals Board was established in 2012. The decisions are on file with the author but are no longer available online.

17. Aliens Consolidation Act (*Bekendtgørelse af udlændingeloven*), LBK no 1021 of 19/09/2014 subsequently referred to in the text as 'Aliens Act'.

18. For example this was the case in 2013, where the Aliens Act was changed so that children (and their parent) whose Danish parent dies can still be eligible for a permission to stay. The rule was introduced after the media brought the story of a Thai woman and her daughter, Im, who had lost their residence permit due to the death of the woman's Danish husband and Im's stepfather. The act was changed with retroactive effect in order to allow the girl to re-enter Denmark, and popularly dubbed '*Im's lov*' (Im's act). See on the case the article :<www.dr.dk/nyheder/politik/overblik-forloebet-om-udviste-im-og-suthida> and on the new act: <www.dr.dk/nyheder/politik/fakta-saadan-ser-ims-lov-ud>.

19. Børnerådet. *Høringssvar vedr. forslag til lov om ændring af udlændingeloven (Familiesammenføring med børn)*, sagsnr. 2012-960-0003. Ministry of Justice. *Kommenteret høringsoversigt over høringssvar vedrørende forslag til lov om ændring af udlændingeloven (Ændring af reglerne om familiesammenføring med børn)*. L150 Bilag 1.

Denmark is bound by international obligations to respect family life as set up in the European Convention of Human Rights (ECHR) and to protect the best interests of the child as foreseen by the CRC. The laws are therefore always drafted in a manner as to not infringe upon international law. However, this human rights commitment does not entail a formal right to family reunification for children, as shown by case law on this topic, since the CRC is not incorporated and thus not a part of the Danish legal system.²⁰

Following the wake of some cases where the media informed that, since 2005, around 800 children under the age of fifteen (in some cases children as little as two years old) had been expelled or not allowed to reside in Denmark for not meeting the requirement of successful integration²¹, the government decided to modify the

rules on family reunification for children. As the analysis proposed will show, the new rules in force from 2012 do not differ substantially from the previous rules. The legislation on family reunification with children in Denmark could still further be improved for the sake of protection of family life and children's interests.

3. Legal Background

3.1 On the General System for Family Reunification in Denmark

The right to family life is very controversial in the Danish legal system. Controversies involve mostly third-country nationals (hereinafter: TCNs) seeking family reunification as spouses or children of a foreigner residing in Denmark. However, cases of Danish nationals experiencing first-hand the intricacies of Danish migration rules also occur when, for example, they marry a TCN. This follows from the EU rule that 'static' citizens, (EU citizens who are living in their native Member State and have not exercised their right to free movement) are not protected by EU law provisions.

There is no express right to family life in either the statutory law (Aliens Consolidation Act, hereinafter referred to as 'Aliens Act') or the Constitutional Act of Denmark. Article 9 of the Aliens Act sets up the provisions on family reunification, but the legislation has become a muddled and patchy area of law. The rules are a consolidation of countless legal amendments, and thus are not the expression of a clear, overarching structure and scope. The provisions on family reunification in the Aliens Act require applicants to meet a long list of self-sufficiency requirements, and also prove 'attachment' to the country if the spouse residing in Denmark is not a Danish national or has not resided in the country for at least 26 years. Moreover, by virtue of its opt-out on Justice and Home Affairs cooperation in the EU, including on migration and asylum affairs, Denmark has decided to be bound neither by the Council Directive on the

Kristelig Dagblad: *Lovforslag om familiesammenføring kritiseres for konventionsbrud*. Kristeligt-Dagblad.dk, 30.03.2012.

20. In case U 2009.974 H the Danish Supreme Court highlighted that the margin of appreciation left to the Member States does not entitle to a right to a family life in a particular country, or to a right to family reunification. In this article I will not discuss whether Denmark lives up to its international obligations to protect the principle of the best interests of the child. For a different opinion on the CRC as a source of law in Denmark see Holdgaard, M. (2012), *Problemer med menneskerettigheder i familieretten – er forestillingsevne virkelig vigtigere end viden?* in Fenger, N. et al (eds.) *Festskrift til Erik Werlauff*. Jurist- og Økonomforbundets Forlag, p. 234.
21. The news reported that some 200 children under twelve years of age were refused family-reunification with their parents in Denmark only in 2011. *Radikale: Frygteligt at udvise børn*. Berlingske.dk 09.12.2011; *EL og regeringen giver afviste børn en ny chance*. Berlingske.dk, 17.11.2011. *Radikale presser Bødskov i sag om udviste børn*. Berlingske.dk 14.12.2011. More recently: *Syv-årig pige kan blive i landet*. Berlingske.dk, 06.01.2012; *Udvist otte-årig må blive i Danmark* Berlingske.dk, 11.08.2012.

right to family reunification²², nor by the Council Directive on the status of TCNs who are long term residents.²³

There are therefore no *direct* obligations stemming from a supranational or national legal context for Denmark to grant a permission to stay to protect the family life of a TCN residing in the country. However, Article 8 of the ECHR, and the case law of the European Court of Human Rights (ECtHR)²⁴ *indirectly* commit Denmark to the protection of family life of certain categories of individuals, e.g. recognized refugees. Article 8 of the ECHR has been invoked in case law, but in a majority of cases the courts have not found the Danish legislation to be in violation of the convention.²⁵ The Supreme Court ruled that neither the so-called '28-years-rule'²⁶ nor the requirement for 'a successful in-

tegration' in the Danish society for children are in breach of Article 8 ECHR.²⁷ How far-reaching the future application of article 7 of the EU Charter on respect for private and family life will be in Denmark is still unknown. This lack of transparency in the legal foundation for a right to family life in Denmark is the first great obstacle to its implementation and enforcement. The peculiarity of this set-up derived by frequent ad-hoc amendments to the legislation, its approach to the limits of breaching Article 8 in the ECHR, and the non-transparency of the administration²⁸ have spurred the Danish political and legal debates on family reunification for years.

not require applicants who have held Danish citizenship for at least 26 years to fulfill 'the attachment requirement' along with the many other requirements for spouses' reunification. This requirement, when fulfilled, has to point at a bigger 'attachment' to Denmark than to another country. E.g. a recognized refugee, previously of Iraqi nationality, who has naturalized as a Dane five years ago, cannot be family reunited with a Syrian wife whom he married after he fled Iraq, because neither of them can prove to be more attached to Denmark than to Iraq or Syria.

22. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, see point 18 in the preamble.
23. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, see point 26 in the preamble.
24. For an illuminating analysis of the conflicting interests of protection of individual rights to family life and the public interests at stake in immigration law, see Thym, D. (2008), Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay? *The International and Comparative Law Quarterly*, Vol. 57, No. 1 (Jan., 2008), pp. 87–112.
25. In U 2011.3083 H, the Supreme Court decided on the refusal to grant family reunification for the spouse of a convention refugee residing in Denmark since 1999, stating that the appellant and his child (born in Denmark) could have resumed family life in his country of origin (Afghanistan). The Court found the Danish legislation to be compliant with international obligations with a very scarce remark.
26. See U 2010.1035 H. The Supreme Court reached a verdict after voting (4-3), which is an unusual occurrence, revealing how tortuous the application of the highly contested 28-years-rule is. Briefly explained, the 26 years rule (at the time of the judgement, 28 years rule) does

27. U 2010.1590 H, U 2010.1599 H, and U 2009.974 H. In this last case, neither the ECHR nor the CRC were found to legitimize another result; the conventions were mentioned, but not further analysed. Article 7 of the EU Charter of Fundamental Rights has been invoked in one judgement (U2011.1864V) by 49 appellants, who claimed that denial of family reunification in their cases, although in line with Danish law, was contrary to EU law and the protection of family life as foreseen by the Charter. The City Court and the Appeal Court rejected the case, stating that the 49 claims could not be treated as one case, since they had been decided in light of concrete and different circumstances. The Courts thus did not assess the Danish provisions on family reunification against the EU Charter.
28. Christoffersen, J. (2006), Forvaltningsretlig transparens: Om familiesammenføring i praksis, *Juristen* no 2, pp. 37-45.

The main field of application of the right to family life is in the administrative arena, where the cases are decided by the Immigration Service and then later appealed (in case of rejection) to the Immigration Board of Appeals (*Udlændingenævnet*), with the final eventuality of taking the case to courts. However, as above-mentioned, case law on this topic is scarce, and has not significantly enhanced the protection of family life. The Immigration Board of Appeals is an independent, quasi-judicial body that functions as an administrative appeal body on a variety of immigration cases that fall under the Aliens Act.²⁹ The meetings of the Board are not public and the parties in the case cannot be present at the meetings, unless the Board decides otherwise.³⁰

The limitations to the right to family life counterbalance the founding values and underlying policies of Danish immigration law. Since 2002, the provisions in the Aliens Act have been designed so that family-sponsored immigration from non-Western countries is sought to be reduced. The preparatory work to the bill justified this reduction for the sake of the integration of foreigners already residing in Denmark.³¹

29. The Immigration Board comprises judges and a number of other members appointed by the Judicial Appointments Council (under the Courts of Denmark), the Ministry of Justice, the Council of the Danish Bar and Law Society, and the Ministry of Employment. The Board deals with *inter alia* complaints on decisions on family reunification, permanent residency, and decisions on expulsions, all made by the Immigration Service as first instance. The Immigration Board's decisions on family reunification from the year 2013 onwards are available online, see <udln.dk/da/Praksis/aegtefaellesammenforing.aspx>.

30. The Immigration Board also publishes a yearly report in which exemplary rulings on the various topic of competence are reported. For the year 2013, see the publication (*Årsberetning*) at <udln.dk/da/Publikationer/Aarsberetninger.aspx>.

31. Draft bill LF 152 2001/2.

3.2 On the Specific System for Family Reunification with Children

In 2004, the requirement for successful integration made its first appearance in the rules for family reunification for children. The rules had a two-fold objective: to get rid of the practice of children's so called 're-education journeys' to the parents' homeland, as well as to prevent children from being left outside of Denmark as long as possible before they reach adult age, in order to be educated and be influenced by their homeland's culture, traditions, values, and norms.³² To prevent these patterns of behaviour, the government was of the opinion that children of immigrants should relocate with their parents to Denmark as early as possible in order to be influenced by Danish norms and values instead of those of the parents' country. Therefore, the maximum age at which a child living abroad can be family reunited was lowered to fifteen years old. Also, as above-mentioned, the possibility to apply for reunification with children between fifteen and eighteen was severely limited. Children in this age group are normally not eligible for family reunification with their parents in Denmark unless the denial would entail violation of the protection of family life or of the best interests of the child, as stipulated in international conventions.

The basis for the family reunification with children can be found in the Aliens Act, Article 9 (1) no. 2, which states that a residence permit can be granted upon application to a child under the age of fifteen who wants to live with the parent having full or partial custody, but only if the child has not established her own family yet. The parent living in Denmark must prove that she holds Danish citizenship or citizenship in one of the Nordic countries, is a recognized refugee, has a permanent residence permit, or has a temporary residence permit that has the possibility of becoming permanent.

32. Bill L 171, 2003/1, 20.02.2004, sections 3.-3.3.

Other conditions are in place in the act (sections 15-19). Among these, the first condition is the self-sufficiency requirement.³³ This states that if significant grounds support it, the residence permit to the child can be made contingent upon the resident parent not receiving State help or social benefits in accordance to the Active Social Policy Act or the Integration Act (not pension, unemployment benefits paid by the parent's unemployment insurance fund, or occasional benefits, but e.g. social security subsidies such as the '*kontanthjælp*') until the child has been granted a permanent residence permit.

Moreover, another condition that can be set is that the parent must fulfil the housing requirement, which is to say she must have an adequate accommodation of suitable dimensions³⁴ (owned or co-operatively owned), or rent her place of residence. If the property is a rental, the lease period must be permanent, or extend at least three years beyond the date on which the residence permit application is submitted. Sub-letting does not meet the housing requirement. The requirement for the size of the residence states that once the family reunification is completed, the residence must meet at least one of the following requirements: The total number of people living in the residence may not be more than double the number of rooms, or the total residential area must be at least 20 sq. metres per person.³⁵ The housing requirement can be waived if the parent in Denmark holds a residence permit as a refugee; has protected status and still risks persecution; has a child from a previous relationship who is also living in Denmark and the parent has custody of the

child or has visitation rights and sees the child on a regular basis; or is seriously ill and cannot be advised to reside in another country.

The requirement for successful integration³⁶ demands that if the child and one of her parents are living in their home country or another country, the residence permit will be given only if she already has, or had, a possibility to obtain such an attachment to Denmark that will constitute a basis for a successful integration. The successful integration requirement is only applied when a parent waits more than two years from the moment she becomes eligible to apply for family reunification and when she finally files the papers. Moreover, the residence permit will be given only if it is in the best interests of the child.³⁷ The successful integration requirement will be further explored in the following sections.

Finally, the parent residing in Denmark, or their spouse or cohabiting partner, shall not have been convicted of abuse against a child in the ten years prior to the application (e.g. for incest, neglect, rape, sexual intercourse with a child under the age of fifteen, recording of child pornography, indecent exposure, manslaughter, assault and aggravated assault, or confinement).³⁸

The Danish Immigration Service employs these rules in practice in order to establish whether the principle of the best interests of the child is respected. In case of first-time permits, this translates to an evaluation of whether the child will develop serious social problems in Denmark, or if there is significant risk that the child will be removed by the authorities upon, or shortly after, arriving in Denmark, and also if there is a risk that the child will suffer abuse.

In the case of stays abroad which cause the child to lose her residence permit, a new request for family reunification has to be filed, and a re-

33. Article 9, section 15 in the Aliens Act.

34. Article 9, section 15 (3) in the Aliens Act.

35. The conditions to fulfil the housing requirement in family reunification cases have recently been gathered in an Executive Order, see *Bekendtgørelse nr. 721 af 13.05.2015 om opfyldelse af boligkravet i familiesammenføringsager og om kommunalbestyrelsens udtalelse om referencens boligforhold*.

36. Article 9, section 16 in the Aliens Act.

37. Article 9, section 18 in the Aliens Act.

38. Article 9, section 19 in the Aliens Act.

newed residence permit can only be granted if it is in the child's best interests. In its evaluation, the Immigration Service will consider a) the duration and character of the child's residence in Denmark compared with the child's stay in her homeland; b) the country in which the child has spent the majority of his/her childhood, and c) where the child has attended school and the languages spoken by the child. Particular emphasis is placed on whether the child lived in Denmark during her formative years— between the ages of two and twelve – and whether the child has, or has had, her primary family and social network in Denmark.³⁹ Also, it is deemed pivotal to assess whether the child was forced to live abroad against her will on a 're-education' visit that would, in the wording of the preparatory work, '*... allow [them] to be brought up there and be influenced by the values and norms of that country. [...] The result of this is that the child grows up in accordance with the culture and customs of its country of origin and is not influenced by Danish norms and values during its childhood*'.⁴⁰

In practice though, the Ministry and the Courts have rejected that the parents' intention to leave the children in the home country, showing a '*desire to shield the child from influence by Danish values and norms under her upbringing*' is the only admissible ground upon which to reject an application for family reunification.⁴¹ Thus, even though the stated objective of the law is to prevent and combat re-education journeys, there may be other reasons for denying family reunification. The Ministry and the judiciary may therefore in practice point to expanding the application of the relevant section, further confusing the legal basis.

This section has shown how many peculiar and specific requirements applicants must

meet if they want to be family reunited with their children. The conditions are varied and detailed, and the stated scope is to try to ensure that children are met with the best conditions when they arrive to Denmark, and, ostensibly, to protect the child's best interests. However, one may argue that the law opens up for a narrow and somewhat instrumental interpretation of the principle of the best interests of the child. This interpretation contrasts with the view that the principle of the best interests of the child is "*an open concept*'.... *that ... should be interpreted in light of the objective as well as subjective aspects of the child's life*".⁴² In the eyes of the authorities the principle of the best interests of the child does not necessitate the child to live with their parents and/or siblings, but necessitates the child having the opportunity to develop a social connection to the host country's culture and society. The Aliens Act and the preparatory works insist a great deal on prospective integration as being the key factor for assessing the best interests of the child. However, the use of the principle of the best interests of the child should be balancing various constitutional objectives and different interpretation styles: thus a sound point of the departure for the assessment of whether the principle of the best interests of the child is protected should be that the laws enacted safeguard the rights and freedoms of children as stated in the CRC.⁴³ Instead, the Danish act sets

39. *Ibid.*

40. Section 3.1, General remarks, L 171 2004.

41. Supreme Court judgement U 2010.1590 H, referring the High Court findings in the same case.

42. Shiratzki, J. (2013), Some reflections on the principle of the best interests of the child – in the light of normality and exceptions, *International Family Law, Policy and Practice*, Vol. 1.1, Winter 2013, pp. 8–13, at p. 11.

43. Lundberg, A. (2011), The Best Interests of the Child Principle in Swedish Asylum Cases: The Marginalization of Children's Rights, *Journal of Human Rights Practice*, Vol. 3 Number 1, pp. 49–70, at pp. 54–55. Lundberg proposes a 'checklist' in asylum cases in order to assess, whether the substantive rights in the CRC will be protected, such as assessing whether the child will have an adequate standard of living, access to education, health care, protection

up conditions which are strictly formulated and enforced, giving rise to decisions based on a narrow and literal interpretation of the rules. Very little is in fact left to the administrator's discretion and/or to genuine considerations from a children's rights perspective. Consequently, either the applicants comply with the guidelines, or they will have a difficult time appealing in case of rejection.

In addition to this, the hundreds of sections now regarding family reunification in Denmark are confusing and convoluted. This raises the risk for errors in interpretation or lack of proper legal guidance exponentially, which may result in a lesser degree of legal protection for children and their right to be with the parent who wants to look after them. A weakness in the Danish legal system impacting the rules on family reunification may be the lack of expertise amongst the law's end-users (e.g. administrative case handlers, lawyers, NGO volunteers offering legal advice, etc.). The lack of expertise is not something that has been documented via specific studies or surveys, but migration scholars have highlighted a number of times that the continuous amendments to the Aliens Act (as much as 63 amendments from 1983 to 2011⁴⁴) have caused the legislation to be particularly confused and poorly set up.⁴⁵ The unclear legal system creates uneven administration and the non-transparency undermines the legal certainty in a very sensitive area of the law. In the

from abuse, discrimination, and violence, etc., see pp. 55 and 67.

44. Gammeltoft-Hansen, T. and Whyte, Z. (2011), *Dansk asylpolitik 1983-2010*, in Vitus, K. and Smith Nielsen, S. (eds.) *Asylbørn i Danmark. Et barndom i undtagelsestilstand*. Hans Reitzels Forlag, p. 152.
45. See e.g. on decisions by the Ministry of Justice on expulsion of families on humanitarian residence permits: 'Experts recommend ransacking cases on expelled children' [Ekspertter vil have endevendt sager med udviste børn], available at <www.dr.dk/Nyheder/Indland/2014/03/23/235344.htm>.

next section, I will focus the analysis on the requirement regarding the potential for a successful integration.

4. The 'Successful Integration' Requirement after the 2012 Law Change

The potential for successful integration has most recently been reviewed during the year 2012, with a bill passed in June and the new act entering into force in October.⁴⁶ The regulation requires that the residence permit for a child over six years of age who is living abroad with one of her parents is conditional upon an assessment on whether the child can be integrated into Danish society. In such cases, residence will only be granted if the child already possesses, or has the possibility of acquiring, sufficient ties to Denmark in order to be able to integrate successfully.

After this reformulation, in the assessment of the integration requirement, both the child and her parents' connection to Denmark will be taken into consideration.⁴⁷ Among others, the factors that are most important in the evaluation are: a) the duration and character of the child's stay in her home country and Denmark, respectively; b) whether the child has resided in Denmark before; c) in which country the child has spent most of her upbringing; d) where the child has gone to school; e) whether the child speaks Danish, and f) whether the child speaks the language of her native country. Beside the integration potential of the child, the authorities will consider the employment status, Danish language ability, educational activities, and efforts made by the parent living in Denmark to become integrated. The case law has been supporting the Ministry of Integration's inter-

46. L 150 2012, Forslag til Lov om ændring af udlændingeloven (*Ændring af reglerne om familiesammenføring med børn*).
47. Erhvervs-og Familiesammenføringskontoret. *Notat om praksis efter bestemmelsen i udlændingeloven Art. 9, stk. 13 (Mulighed for en vellykket integration)*, 2. juli 2007.

pretation in the preparatory works of the law⁴⁸, and reveals that in practice it is impossible for non-integrated foreigners to get family reunification with their children.⁴⁹

The situation of the parent still living in the home country will also be considered, as will her ability and desire to care for the child. However, in a Supreme Court case from 2010, where the child lived with retired grandparents and the mother did not show interests in taking care of the child, these conditions did end up being to the child's benefit, and family reunification was denied.⁵⁰ Only when the parent residing abroad has an invalidating handicap or severe sickness that impedes her ability to care for the child will family reunification with the parent in Denmark be granted. A mere statement that the parent is not willing any more to take care of the child will not suffice.

The integration requirement can be waived if the parent living in Denmark submits an application for family reunification with her child within two years of having the legal pre-conditions for submitting an application, e.g. gaining a permanent residence permit. Also, the requirement can be waived if the two year deadline has expired due to a disagreement over parental custody or if the child's place of residence is unknown and the parent living in Denmark files an application without unnecessary delays, once the hindrances cease to exist. Finally, if the parent living in Denmark has custody of, or has contact with, other young children living in Denmark, the interests of the family unit could constitute a special ground that speaks to not applying the successful integration require-

ment. However, considerations on family unity do not automatically lead to an approval of family reunification, as will be shown by two of the administrative cases presented in the following.

5. Three Administrative Cases

In this article I want to present three different administrative cases, chosen amongst the decisions that were rendered public in 2012 on the website of the Immigration Service, which chose to publish them because of their 'principled' (*principielle*) character. The approach in this article is intended on the one hand to make the abstract law more concrete and on the other hand to demonstrate how the particular circumstances in the life of the children involved are not taken into consideration by the authorities when assessing the potential for successful integration. The cases presented in this article are from 2007 and 2009, thus before the age limit increase for an evaluation of successful integration. Later cases are not made available by the Immigration Service, while the Immigration Board only publishes summaries of cases, thus not providing much particular detail.⁵¹ The cases are representative of how the legal instruments are enacted, revealing different aspects of the legislation, but they appear striking for the

48. L150 2012.

49. These criteria for successful integration of the parent (father) living in Denmark, and the attachment to Danish society were mentioned in the Supreme Court judgement U 2010.1590 H, concerning the refusal to grant family reunification with his 9 year old and 13 year old daughters.

50. U 2010.1599 H.

51. On the Immigration Appeals Board's website it is possible to find four cases on the successful integration requirement, two from 2013 and one from 2014 and 2015, respectively. The three rejection cases present very similar characteristics (children born and residing abroad until application for family reunification is filed, and the two-years limit elapsed, all resulting in a refusal to grant family reunification to the children involved). The decision by the Immigration Appeals Board which resulted in a reversal of the Immigration Service's decision on refusal to grant a residence permit put a great deal of emphasis on the integration of the mother (reference person) and her Danish husband's active employment in the labour market. See <udln.dk/da/Praksis/boernesammenfoering/Vellykket%20integration.aspx>.

manner in which the individual circumstances of the cases are evaluated.

A. Twelve year-old girl who had attended school in Denmark

This case is a dismissal of a complaint for rejection of permission for family reunification with a twelve year-old girl. The applicant was the mother who arrived in Denmark in 1997 and had had permanent residence since 2002. The mother applied for family reunification in 2006, thus she and her child had to meet the integration requirement, as more than two years had passed since she fulfilled the criteria for applying. The mother held full custody of the child.

The mother left her daughter in her home country and moved to Denmark, where she was married to a Dane with whom she had another child. At the time of the decision, the mother was living with a different Danish citizen, who was economically stable and a business-owner. The mother spoke Danish and had worked three years prior to enrolling in an educational programme in 2007. She had attended school for three years in order to learn Danish. Her intention was to first learn the language, and then start working to be economically independent from her husband, before applying for family reunification with her child. She visited her child once a year, each visit less than three months in length.

At the time of the application, the child was living with aging grandparents, close to her father. She spoke the language of her home country and had gone to school there as well. When in Denmark in 2006 and 2007, she attended a Danish school, learning the basics of the language and getting along both socially and scholastically.

The Ministry's evaluation arrived at the conclusion that the mother should continue her visits as she had been doing previously, and family reunification was denied. The Ministry stressed the fact that the child had not been influenced by Danish values and norms under her upbringing,

and the considerations about her scholastic and social achievements did not count in this respect. Other factors that did *not* have an impact on the decision were the mother's full custody of the child; the integration of the mother and her attachment to Denmark; and the fact that the mother wanted to be economically independent before bringing the child to live with her.

The Ministry assessed that the mother was not a relevant part of the child's life, and that there were no special grounds, not even the respect of the principle of the family unit, which could lead to a different decision. This is because the act is worded and interpreted so narrowly that 'special grounds' can *only* be severe sickness or handicap, of the child or the parent, that render family life impossible in another country.⁵² The Ministry addressed the mother directly, insisting on the assessment that '*It was your own choice to leave your child in your homeland, in the custody of her grandparents*'.⁵³ The conclusion that it was a choice instead of a real constraint meant that the delay in applying for family reunification disqualified her from getting a chance to live permanently with her daughter.⁵⁴

In this decision, it is striking to see how a young age of twelve years cannot imply integration potential, but also how the mother and her efforts to be economically independent and well-established in the country are not acknowledged. This contradicts the general perception of the woman's independence being a remarkable and desirable characteristic, one which is admired especially in Danish women, in contrast with immigrant women (for example as re-

52. P. 4 in the decision. Other grounds stated were the fact that the parent does not know where the child is residing, or if the parent is a recognized refugee that cannot establish family life in the country she fled from.

53. P. 8 in the decision. My translation.

54. Ironically, the Ministry concluded by apologizing for its own delay in the handling of the case.

gards the headscarf-debate). Self-sufficiency is, moreover, one of the goals set up for migrants in Denmark in the Integration Act. What could the mother have done to better convince the authorities that she did not leave her daughter in her home country with the intention of shielding her from Danish values and norms? The fact that so many factors were not taken into consideration leads one to think that the integration potential requirement is indeed a presumption rule, a legal construction that assumes that older children who live apart from their parents in their home country for more than two years can no longer be integrated into Danish society, and therefore cannot be admitted to live in the country.

B. Fourteen year-old whose upbringing was in her homeland

The second case examined is a case from 2009 or 2010 (the year is not specified in the anonymous decision), regarding a child born in 1994 in Denmark. When the child was five years old, the mother and the applicant's two younger siblings travelled back to their home country to spend some time there. The mother returned to Denmark in 2003, and in 2005 she got full custody of the child. In the meantime, the child remained in her parents' homeland, but was later moved to a neighbouring country to live with her uncle (her father's brother). From that location, the mother was able ('with cunning', according to the decision) to get the children back from the uncle. The mother stated that she was not allowed to take the child back with her to Denmark, and that she felt threatened by her now ex-husband and his brother.

The child did not speak, write, or read Danish, nor did she attend a Danish school (she was only five years old when she left after all), but she spoke, wrote, and read the language of her home country, and she had been attending classes of Quran teaching. The child did not have any close family, except for her parents'

brothers. The mother had another child, a Danish citizen, of whom she had the full custody.

The Immigration Service considered the residence permit of the girl as elapsed, without any possibility to grant a new residence permit, since the girl had left Denmark from 1999 to 2009, i.e. for more than twelve months, which is considered the time limit for a permissible stay abroad. The fact that the father had made the decision had no relevance; to the contrary it was stressed that the mother had not (but should have) contacted the Danish authorities to make sure that the custody and relative decisions were consistent with the mother's wishes.⁵⁵ Nor was it relevant that the father and his family did not want the child to go back to Denmark. Also deemed immaterial were the facts that the mother felt threatened by the child's uncle and that the child had a sibling who was a Danish citizen living in Denmark.⁵⁶

Notably in this decision, the Immigration Service mentions international conventions (ECHR and CRC) stating that they also had been taken into consideration. Unfortunately for the child, these considerations did not lead to a new residence permit. This was stated without further elaboration. The child's age (fourteen, almost fifteen), the lack of proficiency in the Danish language, and the fact that the child did not attend Danish school, but instead religious school, were the determining factors upon which the Immigration Service based its decision.

In this decision it is striking to see how the Immigration Service dismissed relevant issues in this case. To expect a foreign woman to contact the Danish authorities is to project onto migrants a pattern of behaviour that may or may not be automatic for them. Moreover, the claims made by the child and her mother about the behaviour of the uncle and father were not taken into consideration at all. Although mentioned,

55. P. 3 in the decision.

56. P. 6 in the decision.

as they should be, international conventions offered very little protection to this child who wanted to be family reunited with her mother.

C. Five year-old boy and his mother denied family reunification

The last case is again from 2007. The mother was denied family reunification because she and her husband could not prove that they had a stronger attachment to Denmark than to their home country, where they met and got married. The child was born abroad in 2002, and was five years old at the time of the decision. Since the application was given more than two years from the time the father got a permanent permission to stay (2001), the integration requirement had to be fulfilled. The child had her upbringing 'so far' (as stated in the decision) abroad, where the mother, grandparents, and other family members lived, speaking the language of that country; consequently she did not have any '*independent connection to the Danish society*'.⁵⁷

Apart from this somewhat odd consideration about a five year-old child and her connection to a society, what is interesting in this decision is the evaluation of the integration of the father. The Immigration Service does not consider him to be integrated, having only lived six years in Denmark (a lapse of time that, in other countries, would qualify him as eligible to apply for citizenship). Therefore, the father could not 'imprint' (in Danish, *præge*) the child with Danish values and norms under the child's youth, where the potential for a successful integration is at its fullest.⁵⁸ The child was therefore to remain with her mother, and the father was to continue family life as he did, or to move back to his home country to reunite the family there, as there were no impediments for him moving back. His lack of integration meant that he could not sponsor his family to live with him in his new country of residence. In this decision it is

evident that the child's residence permit was made conditional upon the father's integration.

This case would have a different outcome if the legal context was that of today, where the rules have changed as regards smaller children (although, the mother would still be denied family reunification). To that topic we now turn in the next section.

6. A Critical Assessment of the Successful Integration Requirement

The new amendments on family reunification with children were discussed as two separate bills. The one act⁵⁹ adopted introduces a new formulation of Article 9, section 16, regarding the potential for successful integration in Denmark, while the other act amended the rules for re-obtaining the residence permit after the child's permit has expired.⁶⁰

The most relevant change was raising the minimum age to six years; in practice the rule is only relevant for children over eight years old (in that the two year limit for applying for family reunification will only be applied to six year old children). The integration requirement will be waived if a child is over six years old but no more than fifteen years old, and their parents apply as soon as possible for being family reu-

59. Act no. 566 of 18/06/2012.

60. The other Act (Act no. 567 of 18/06/2012) was an amendment to Article 9, section 17, adding a new 2nd and 3rd point (*pkt.*), regarding the possibility for obtaining a new residence permit if the child has lost it due to extended absence from Denmark. The original formulation of this part of Article 9 stated that the permission to stay could only be granted anew if that was assessed to be 'in the child's interests'. From now on, in this evaluation the child's upbringing and family and social networks in Denmark may be added particular value. If the residence permit has expired because the child, against its will, has resided outside the country on a re-education trip or another stay abroad that have a negative impact for schooling and integration, this has also to be considered in the evaluation of the child's interests.

57. P. 11 in the decision. My translation.

58. P. 11 in the decision.

nited (less than two years from being eligible to apply). Before 2012, children of any age could be required to be subjected to an evaluation of their integration potential, and thus, even two year-old children were denied family reunification. In this optic, the amendment was presented as a 'relaxation of the rules'. I will argue that the change did not fundamentally alter the character of the act, which speaks against family reunification with children over eight years of age.

The new rule setting the six year threshold is striking for its apparent arbitrariness. How can it be decided that a child over eight years old has no chance of being integrated in a country other than her own? The Ministry of Justice articulates the reasons for setting the threshold at this age in the hearing report during the passing of the bill.⁶¹ The Ministry reports the perception of the then-government was that

'minor foreigners who shall live in Denmark have to grow up here and therefore have to arrive as early as possible in their childhood. This creates the best foundation for a good integration of the child in the Danish society and thus gives the child the best chances for a successful life here in the country. In this regard it is decisive, in the government's opinion, that the child resides in the country in their formative years, where their social skills, language competences, and subject knowledge are shaped pronouncedly, and where the child at an even higher degree establishes personal contacts and a social network. Such a development in a child will often gradually begin in the first years of their schooling.'⁶²

The age limit is therefore set so low because the government wanted to make sure that those children who will live in Denmark as adults get a chance to experience the national culture and values through schooling in the country, starting with elementary school attendance.

What did the new amendments entail, in practice? After the sixth birthday, the two year deadline before application of the successful integration requirement begins. Therefore, the requirement on successful integration will *always* be applied to children of eight years of age or older, when more than two years have passed since the parent could legally apply. In these cases, it would be very difficult, if not impossible, to have family reunification with children. When taking into consideration both the parents' integration (where the standards are very high) together with the child's upbringing in another culture, attending school in another language, etc., the Immigration Service will undoubtedly deny family reunification in Denmark. Seen in this light, the new rules entailed that in the future children as young as eight years can be evaluated as unable to integrate successfully into Danish society. This is a presumption that is not founded in any scientific or sociological studies, but is exclusively a result of political debate. After all, it is still discussed, even in academia, what the concept of integration actually means and how it can be measured, for example when confronted with the concept of assimilation.⁶³

After reviewing the legislation and the administrative cases on refusal to grant family reunification to young children, it is now time to raise a couple of points for further reflection as outlined in the beginning of this article. Taking a critical stand based on Dalberg-Larsen mor-

61. Ministry of Justice (Justitsministeriet), *Kommenteret høringsoversigt over høringsvar vedrørende forslag til lov om ændring af udlændingeloven (Ændring af reglerne om familiesammenføring med børn)*. 12 April 2012. L 150 Bilag 1.

62. *Ibid.*, p. 7. My translation.

63. Schneider, J. and Crul, M. (2010), New insights into assimilation and integration theory: Introduction to the special issue, *Ethnic and Racial Studies*, 33:7, 1143–1148.

al-ethical perspective,⁶⁴ it is fair to ask whether cases of family reunification should be decided by assessing the integration potential of a child and of her parent. Should an integration potential be the tipping point for a residence permit, which allows a child to be reunited with their parent? Although integration is indeed a key factor for a good life as an immigrant in a host country, it should be *one* among other factors to tip the scale. From a normative standpoint, a general basis of values at the core of the regulation on family reunification with children could also be constituted, *inter alia*, by ethically defensible principles, such as: respect for individual freedoms and choices, fair consideration of individual circumstances of a case, and broadly discussed and informed ideals of integration. These values are at this point not to be found in Danish legislation, based on the following observations.

Firstly, it is fair to point out that the legislation leaves to the authorities a margin for discretion in the evaluation of family reunification applications. However, at the same time the Act and all its corollaries (preparatory works, executive orders, etc.) set up strict guidelines for how to measure the integration of the parent, what timeline a 'normal family reunification' should follow, and what age a child should have in order to have a chance to become integrated.⁶⁵ With the timeline being set, there is no possibility for the foreigner to argue that other events in life may result in a long time passing before a parent finally decides to bring a child to live with her in Denmark. The administrative authorities' discretion is consequently reduced. The social and practical conditions that could impede a child's family reunification with a par-

ent as soon as possible after the parent is eligible to apply have not been given a place for consideration in the administration and case law.⁶⁶ Immigrant parents' decisions about the upbringing of their children are closely scrutinized, but the presumption seems to be that not applying for family reunification as soon as legally possible equals a conscious decision to avoid that the child is influenced by Danish values and norms. Normal occurrences of life or individual choices cannot find their place in the administration of the rules on family reunification with children.

Recently, the ECtHR has condemned Denmark for disrespect of the right to family life in the administration of a case regarding a girl sent on a re-education journey⁶⁷, pointing out that '*various factors, including practical and economical constraints*' can explain limited contact between a mother and a child.⁶⁸ The Immigration service has now decided to adjust its practices and administration of the re-education journey cases, stating that more weight will be given to the child's wishes and interests about the decision on where to live when she reaches a certain age and maturity; and less stress will be put on the parents' decision in this regard.⁶⁹ However,

64. Dalberg-Larsen (2002), *ibid.* p. 32.

65. A similar 'tension' is highlighted in the evaluation of the child's best interests in Sweden by Schiratzki, J. (2005), *Barnets bästa i ett mångkulturellt Sverige. En rättsvetenskaplig undersökning*, Iustus Forlag, mentioned in Lundberg (2011), *ibid.* p. 54.

66. This was the case in the already mentioned Supreme Court case U 2010.1599 H.

67. Case of Osman v. Denmark (*Application no.* 38058/09), judgement of 14 June 2011.

68. Para. 74 in the judgement.

69. *Notat om fortolkningen af Den Europæiske Menneskerettighedsdomstols dom af 14. juni 2011 i sagen Osman mod Danmark* (appl.no. 38058/09). Familiesammenføringskontoret, 8. juli 2011. In this interpretation memo it was decided to draw a parallel to Danish family law cases, where children older than seven years old are involved in the decision their place of residence. The new interpretation was applied in a Supreme Court Judgement in case U 2013.388 H, where a child had lost his residence permit in Denmark because he was sent to Nigeria by his mother for four years since he turned twelve years old. The Supreme Court decided the mother's decision over the child should not affect the decision so that his interest, his right to privacy

the ECtHR has not pronounced an equal assessment on the relevance of individual choices in reference to the rules on successful integration and family reunification as yet.

Secondly, what appears from the legal acts and the cases examined is the suspicion that the requirement of proving potential for a successful integration may not be based on a real evaluation at all. The rule looks more as a legal construction that renders possible the automatic rejection of family reunification applications in cases where the child has spent too many years in her parents' home country, or when the parent has not been able to prove that she is well integrated herself. It is now a presumption rule about the non-successful potential integration of children who have spent a long time abroad before coming to Denmark. It is then not a real evaluation of the potential for a successful integration, but an automatic rejection in all the cases where the child was left 'too long' in another country, where she is influenced by other societal values and norms. From a children's rights perspective, the automatic rejection raises the concern that it is not the individual circumstances of the case which are determining factors for effectively and fairly deciding if there is a potential for successful integration. If there is a real evaluation of the integration, it is that of the parent; this is now even more stressed in the *travaux préparatoires* for the new 2012-act.⁷⁰ The non-integrated foreigners, who are not in permanent employment and who are not good at speaking Danish, are, so to say, 'punished' for their lack of integration; the punishment being restricting their freedom to decide to take care of their children in Denmark.

Thirdly, the legislation builds on political decisions about how old is too old for being in-

tegrated, and what integration involves. When is schooling in Denmark and proficiency in the national language evaluated as enough, and possibly more, than the culture and language of the parent's country of origin? In this very delicate and politically sensitive area, I think it is still admissible to question how fair it is to expect that the parents' home country's cultural, religious, and linguistic heritage always have to subside to make space for Danish language, values, and norms. This 'coercive integration'⁷¹, which is visible in other areas of immigration law as well, is turning out to be a peculiar characteristic of Danish immigration law. Its underpinning rationale seems to be that a person can only have 'one' culture, or set of values, or set of moral norms. In this understanding, the cultural norms and values from the immigrants' country of origin are an impediment to acquiring new, Danish values in the country of residence, as if there was no space in a person's identity for multiple cultural characteristics. As regards integration achievements and potential, when the laws are framed in terms of values, culture, and norms, they may be founded on a liberal understanding of nationalism⁷² that entails that immigrants residing in Denmark have to become Danish in a cultural sense, and members of the Danish nation in a liberal understanding.⁷³ An integration perceived in these terms leaves little room for protection and respect of immigrants' cultural heritage, including that of

and family, expressed by a strong attachment to Denmark were not taken into consideration when reassessing the possibility to grant him a renewed permission to stay.

70. Section 3.3, General remarks, LF 150 2011/2012.

71. Adamo, S. (2012), What is the Point? – Policies on Immigration and the Language Issue in Denmark. *RECODE Publications*, No. 04, April 2012.

72. Lægaard, S. (2005), Dansk udlændingepolitik og nationalisme, in *Bag den politiske retorik – Essays i værdikampen*, edited by A.P. Folker, K. Hansen and S. Lauridsen. København: Tiderne Skifter, pp. 119–139; Lægaard, Sune. (2009), Liberal Nationalism on Immigration, in Lipert-Rasmussen, K. and Lægaard, S. (eds.) *Nationalism and Multiculturalism in a World of Immigration*, Palgrave Macmillan, pp. 1–20.

73. Lægaard, S. (2005), *ibid*.

immigrant children. A multiplicity of identities and cultures is not admitted, nor understood, and this feeling is pervasive in many a political arena. By means of example, in 2012 the previous Minister for Gender Equality and Ecclesiastical Affairs, Manu Sareen, had to defend himself against allegations that he could not properly represent Denmark, since he had declared that he felt proud to have both a Danish and Indian heritage.⁷⁴

Conclusion

Children have become an instrument in the integration debate in Denmark. In a Dalberg-Larsen inspired politico-legal optic that assesses the law as being an expression of citizens' values⁷⁵, we can criticise the family reunification rules only up to a certain point. In Denmark, the elected governments since the 2000s have equated integration to adherence to Danish culture and norms, and to integration in the labour market. Since the rules have not fundamentally changed in this relatively long period of time and the Aliens Act has been enforced by administrative and judiciary instances, it is difficult not to conclude that the rules on family reunification, although contested, express a certain predominant societal view that sustains the limitation of immigration from (particularly non-Western) third-countries.

Notwithstanding these considerations related to immigration control, it is still important to highlight the particular standing of children in the matter of family reunification, and to stress the importance of insisting on a children's rights perspective. Going back to the question posed in the beginning of this article,

on whether it is possible in the framework of Danish law to consider the child's situation as independent from their parents', the analysis presented above highlights that if the parents' integration is evaluated, the children's status and possibility to obtain a residence permit will indeed be derived by the status of the parents. This conclusion paves the way for further considerations from a children's rights perspective, such as what it means that no assessment of the child's situation is actually carried out. The principle of the best interests of the child and contemporary child law (*børneret*) have shifted the perspective towards a notion that children's legal status is independent from their parents, and no longer a by-product of adults' status.⁷⁶ Nonetheless, Danish legislation appears to be going in the opposite direction in these cases, denying children to be family reunited with a non-well integrated parent.

From a moral-philosophical stand⁷⁷, it is thus still possible to criticise the rules on family reunification of children as being too strict, arbitrary, and unfair. To assume, as the Aliens Act does, that children over eight years of age do not possess (the rather elusive) 'integration potential', or that non-integrated parents do not deserve to decide when to live with their children in Denmark, is a legal argument that is hard to defend ethically. The rules protecting vulnerable subjects such as children should be formulated in a clear and well-arranged way and interpreted as to really evaluate the child's best interests in each single case. I maintain that these are moral principles that should be at the foundation of the legal regulation on family reunification.

Instead, it is not clear at this point how we can truly protect the best interests of foreign children in national immigration law, and what can help to enhance the rights of immigrant families to decide independently where

74. Times of India: *I feel honoured representing both Denmark and India: Manu Sareen*. <timesofindia.indiatimes.com>, 03.02.2012. Politiken: *Dansk minister: Jeg repræsenterer også Indien*. <politiken.dk>, 06.02.2012. Information: *DF: Thorning må forklare indisk minister*. <information.dk>, 08.02.2012.

75. Dalberg-Larsen, J. (2002), *ibid.*, pp. 28–32.

76. Shiratzki, J. (2013), *ibid.*, at p. 9.

77. Dalberg-Larsen, J. (2002). *ibid.*, pp. 32–36.

and how to conduct family life. Family life is of key importance for migrants, and also for their integration, and this human dimension of migration is much too often neglected when a (theoretically easy to defend) fundamental right such as family reunification clashes with state interests.⁷⁸ What may be needed is a reflection on how and to what extent it is possible to continue to sacrifice the fate of the individual fundamental right for the sake of enforcing a morally weak immigration law, starting a political and legal debate on what place integration into Danish society plays in this respect.

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